



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2022-0682; FRL-10126-01-R9]

Air Plan Approval; California; San Diego County Air Pollution Control District; Oxides of Nitrogen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the San Diego County Air Pollution Control District (SDCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO_x) from boilers, process heaters, and steam generators. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or the “Act”). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before [Insert date 30 days after date of publication in the *Federal Register*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2022-0682 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional

submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: La Kenya Evans, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3245 or by email at evans.lakenya@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. The State’s Submittal

- A. *What rule did the State submit?*

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the SDCAPCD and submitted by the California Air Resources Board (CARB).

TABLE 1 - SUBMITTED RULE

Local Agency	Rule #	Rule Title	Adopted	Submitted
SDCAPCD	69.2.2	Medium Boilers, Process Heaters, and Steam Generators	09/09/21	03/09/22

On September 9, 2022, the submittal for SDCAPCD Rule 69.2.2 was deemed by operation of law to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. *Are there other versions of this rule?*

There are no previous versions of Rule 69.2.2 in the SIP. The SDCAPCD adopted an earlier version of this rule on July 8, 2020, which was submitted to the EPA on September 21, 2020 (“2020 submittal”). The EPA provided comments for rule revisions to SDCAPCD without acting on the 2020 submittal, and the SDCAPCD subsequently amended the rule. Rule 69.2.2 was re-submitted to the EPA on March 9, 2022 (“2022 submittal”), but the background information for Rule 69.2.2 was not included. In a letter to the EPA Region IX Regional Administrator dated November 22, 2022, CARB withdrew the 2020 submittal. The EPA will use the background information in the Staff Report from the 2020 submittal to proceed with our action on the 2022 submittal, as SDCAPCD’s September 21, 2022 withdrawal request letter to CARB clarifies.

C. *What is the purpose of the submitted rule?*

Emissions of NO_x contribute to the production of ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_x emissions. Rule 69.2.2 regulates boilers, process heaters, and steam generators (units) with a heat input rating greater than 2 million British thermal unit (Btu) per hour to less than 5 million Btu per hour that are manufactured, sold, offered for sale or distributed, or installed for use within San Diego County. New units that operate on gaseous fuel have a NO_x emission limit of 30 parts per million by volume (ppmv) and new units that operate on liquid fuel have a NO_x emission limit of 40 ppmv. Units that operate on a mixture of liquid and gaseous fuels must calculate their heat-input weighted average to comply with the NO_x emission limits of the rule. The rule also gives a CO emission limit of 400 ppmv for new units.

All emission limits are calculated at 3 percent oxygen (O₂). Existing or relocated units, along with new units, are required to have a tune-up once a year. New units are required to monitor the burning of liquid and gaseous fuel through a non-resettable, totalizing meter to measure either the mass flow rate or volumetric flow rate, temperature, and pressure of each fuel to the unit. Manufacturers of units without a permit to operate that are sold in San Diego County must apply for certification. Facility operators or owners of these units must apply for an authority to construct/permit to operate or must register the unit to demonstrate that the unit complies with the emission limits of Rule 69.2.2. Test methods are provided in Rule 69.2.2 for new unit compliance testing and certification for sale in San Diego County. Test methods are also provided for new units certifying their higher heating value of a fuel if not provided by a third party provider.

The EPA's technical support document (TSD) has more information about this rule.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require reasonably available control technology (RACT) for each major source of NO_x in ozone nonattainment areas classified as Moderate or above (see CAA sections 182(b)(2) and 182(f)). The SDCAPCD regulates an ozone nonattainment area classified as Severe for both the 2008 and 2015 8-hour National Ambient Air Quality Standards NAAQS (40 CFR 81.305). Therefore, this rule must implement RACT.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation, and rule stringency requirements for the applicable criteria pollutants include

the following:

1. EPA, “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,” May 25, 1988 (the Bluebook, revised January 11, 1990).
2. EPA Region IX, “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” August 21, 2001 (the Little Bluebook).
3. EPA Region V, “NO_x Emissions from Industrial/Commercial/Institutional (ICI) Boilers,” March 1994.
4. CARB, “Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters,” July 18, 1991.

B. *Does the rule meet the evaluation criteria?*

This rule meets CAA requirements and is consistent with relevant guidance regarding enforceability and SIP revisions. The TSD has more information on our evaluation.

C. *EPA recommendations to further improve the rule*

The TSD also includes recommendations for the next time the SDCAPCD modifies the rule.

D. *Public comment and proposed action*

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because it fulfills all relevant requirements. We will accept comments from the public on this proposal until **[Insert date 30 days after date of publication in the *Federal Register*]**. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally enforceable SIP.

III. **Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference San Diego County Air Pollution Control District Rule

69.2.2, adopted on September 9, 2021, which regulates operations and emissions of certain boilers, process heaters, and steam generators, as discussed in section I. of this preamble. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the FOR FURTHER INFORMATION CONTACT section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

The state did not evaluate environmental justice considerations as part of its SIP submittal. There is no information in the record inconsistent with the stated goals of Executive Order 12898 (59 FR 7629, February 16, 1994) of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 16, 2023.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

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